

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2111 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be
allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the
fair copy of the judgment ?

4 Whether this case involves a substantial
question of law as to the interpretation
of the constitution of India, 1950 or any
order made thereunder ?

5 Whether it is to be circulated to the
civil judge ?

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UNITED INDIA INSURANCE COMPANY LTD. - Appellant(s)

Versus

DEEPAKBHAI HIRABHAI & 1 - Defendant(s)

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Appearance :

MS HINA DESAI for Appellant(s) : 1,

RULE SERVED for Defendant(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 01/12/2006

ORAL JUDGMENT

The appellant, United India Insurance Co. Ltd., has

challenged the judgment and award passed by the Commissioner under the Workmen's Compensation Act, by which the learned Commissioner has allowed the Workman Compensation Application No. 10 of 1996 partly and it is held that the concerned workman is entitled to Rs.33783/- by way of compensation.

The concerned workman was serving in the factory belonging to respondent No.2 wherein he was getting salary at Rs.1500/- per month. While he was working in the factory on the relevant date, i.e. 11.09.95, he sustained employment injuries as his hand was crushed in a machine while operating the machine in the factory. He was admitted in the hospital and was subjected to operation by one Dr. Maru. According to the workman, he is 100% disable and because of the injury, he was removed from service. In spite of demand since the amount was not paid, an application was filed for getting compensation at Rs.50,000/- as well as penalty and interest. The concerned parties appeared before the Commissioner. The learned Commissioner framed issues at Exh.29 and after considering evidence on record, came to the conclusion that the concerned workman has suffered 30% disability as per the medical certificate of the Doctor. The learned Commissioner found that the workman is entitled to compensation on the basis of the aforesaid 30% permanent disability and on that basis, the Commissioner awarded the aforesaid amount. While considering the payable amount, the authority considered the salary of the workman at Rs.1500/- per month. Being aggrieved by the said order, the Insurance Company has preferred this appeal under the Workmen Compensation Act.

Scope of the appeal is very limited and the appeal is maintainable only if substantial question of law is involved. Learned advocate Mrs. Desai submitted that the concerned workman had given consent that his disability may be taken at 15% but inspite of that his disability is taken at 30% and order is passed accordingly. She further submitted that even the concerned workman was continued in service for one year after the alleged incident and thereafter he was relieved from service. She submitted that the disability is, therefore, not permanent in nature.

I have heard the learned advocate and has also gone through the record and proceedings which is called for from the trial Court.

Though served, the workman has not appeared before this Court.

An appeal under the Workmen's Compensation Act is maintainable only on substantial question of law. So far the assessment of percentage of disability is concerned, it is no doubt true that the workman has stated before the learned Commissioner that his disability may be assessed at 15%. However, in my view, the Tribunal is perfectly justified in ignoring such consent as ultimately, as per the medical evidence, which is not in dispute, his permanent disability is to the extent of 30%. The workman received serious injuries on his hand and the Doctor who treated him [Dr. Maru] has given certificate and as per the same, permanent disability is to the extent of 30% and on that basis, the amount is calculated. The workman has stated that in view of the

injuries, he is even removed from service.

In the instant case, the concerned workman was not continued in service as he was not capable of performing the duties for which he was appointed, i.e. as a machine operator. In fact, because of the injury, there is a total disablement and now he is not doing the same work. Considering the aforesaid aspect of the matter, the order passed by the Commissioner, which is passed on the basis of medical evidence of the Doctor, is not required to be interfered with by this Court in the appeal especially when it cannot be said that the Commissioner has committed any error, much less on any substantial question of law, while deciding the application. Even if the workman has given consent for treating his disability at a lower percentage, the same cannot be a ground for interfering with the order because as per the medical evidence and the Doctors certificate, disability is 30%.

Having heard the learned advocate Ms. Desai and having gone through the record and proceedings, I find no substance in the appeal. The appeal is therefore dismissed, with or order as to costs.

Consequently, the amount deposited under the Award along with accrued interest shall be forth paid to the workman, after proper verification.

[P. B. MAJMUDAR, J.]

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